
Costs Decision

Site visit made on 13 June 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

**Costs application in relation to Appeal Ref: APP/F0114/W/23/3318194
Widcombe Tennis Court, South Widcombe, Hinton Blewett, Bristol
BS40 6BN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Andrew and Tracey Cotterell for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of a dwelling, covered parking, implement store and formation of vehicular access.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants consider that the Council unreasonably refused the proposal and in doing so reneged on the support previously given in pre-application advice. As such, they contend that unnecessary costs were incurred in pursuing the appeal.
4. PPG¹ further advises that local planning authorities are required to behave reasonably in relation to substantive matters at the appeal, and a list of examples of unreasonable behaviour is given. Although not exhaustive, this list does not suggest that the lack of adherence in formal decision making to pre-application advice would be likely to amount to unreasonable behaviour.
5. The National Planning Policy Framework (the Framework) generally encourages early engagement and states² that good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.
6. The evidence before me indicates that the applicants partook in two pre-application consultations following the dismissal of appeal reference APP/F0114/W/18/3208289. The written advice given stated that subject to the

¹ Paragraph: 049 Reference ID: 16-049-20140306

² Paragraph 39

provision of additional/revised documents it was considered that a proposal for the erection of a new dwelling on the site could be deemed acceptable.

7. Nevertheless, ultimately that was not the case. The Council subsequently put forward justified reasoning as part of their formal consideration of the appeal proposal and supplemented that further in their appeal statement of case. It will be seen from my decision that despite having regard to the pre-application advice, I agreed with those concerns.
8. Furthermore, planning application 20/04595/FUL for the erection of a dwelling at the appeal site was refused on 14 February 2022. The timing of this decision followed the pre-application advice but preceded the submission of the appeal proposal. The refusal reason was similar to that used on the decision notice for the appeal scheme. Hence, this would have informed the applicants as to the likely concerns of the Council prior to making the application for the appeal proposal. That is to say, they were no longer solely reliant on the pre-application advice in deciding whether to pursue the appeal proposal.
9. Moreover, the pre-application advice is prefaced by an explanation that it constitutes an informal officer opinion that is not binding on formal decisions of the Council whether made by elected members or under powers delegated to officers. Neither do I accept that the wording of the advice highlighted in paragraph 3.3 of the applicant's costs application was unequivocal. The use of the terms '*subject to the provision of additional/revised documents*' and '*could be deemed acceptable*' point to the tentative and conditional nature of the statement.
10. The reference to pre-application engagement as a discussion in paragraph 39 of the Framework, is in my view a good one. It accurately describes an informal process whereby incomplete or alternative schemes for development can be considered in broad terms. Furthermore, this is normally done in advance of consultation responses being sought. Whilst normally beneficial to developers, given the generally discursive, explorative and evolving nature of the process, informal officer comments are not normally intended to be seen as a ruling. To treat them as such would be likely to have a cooling effect that would to an extent undermine the value of the procedure.
11. I acknowledge that the applicants have some basis to feel aggrieved that had the Council had concerns about the unsuitability of the location of the appeal site for residential development, then they ought to have better outlined that in a more forthright way early in the pre-application discussion. However, this relates more to the quality of the pre-application advice given rather than the Council's formal decision and position at appeal being unsubstantiated.

Conclusion

12. Accordingly, it has not been demonstrated that the Council has behaved unreasonably within the meaning of the PPG. It follows that the applicants were not put to unnecessary or wasted expense in testing the Council's position at appeal.

Helen O'Connor

Inspector